

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**OCT 24 2005**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSHUA ASUNCION,

Defendant - Appellant.

No. 04-10593

D.C. No. CR-03-00239-RLH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Roger L. Hunt, District Judge, Presiding

Argued and Submitted October 19, 2005  
San Francisco, California

Before: REINHARDT and THOMAS, Circuit Judges, and RESTANI<sup>\*\*</sup>, Chief  
Judge, United States Court of International Trade.

Asuncion appeals the district court's decision denying his motion to  
suppress. We affirm, and deny his request for a limited remand for resentencing.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited  
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> The Honorable Jane A. Restani, Judge, United States Court of  
International Trade, sitting by designation.

Counsel for the defendant failed to make a motion to suppress at the time specified by the magistrate judge and, instead, many months later filed a belated request for an extension of time only a few days before the scheduled trial date. Counsel offered no plausible explanation for his failure to comply with the rules. Assuming that the court should have ruled on the merits of the suppression motion, its failure to do so was harmless because it would have been required to deny the motion as a matter of law. *See United States v. Chavez-Miranda*, 306 F.3d 973, 978 (9th Cir. 2002); *see also United States v. Howell*, 231 F.3d 615, 620-21 (9th Cir. 2000).

Under the terms of his plea agreement, Asuncion waived the right to appeal his sentence. Therefore, he is not entitled to a limited remand for resentencing under *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). *See United States v. Cortez-Arias*, No. 04-10184 (September 30, 2005) (holding that a waiver of the right to appeal bars an *Ameline* remand).

Accordingly, the judgment of the district court is **AFFIRMED**.